HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

Writ Petition No. 2179 of 1998

Between

M.Srinivasa Rao ..Petitioner

AND

The Depot Manager, A.P.S.R.T.C., Narasaraopet and another ..Respondents

:: JUDGMENT ::

4.4.2007

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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Writ Petition No. 2179 of 1998

This writ petition has been instituted questioning the correctness of the Award passed by the Labour Court at Guntur in I.D.No.417 of 1994.

The writ petitioner is a Conductor with the State owned Road Transport Corporation. While he was conducting the bus on 23.10.1991 on the route – Narasaraopet to Ongole, the Divisional Enforcement Squad of the Corporation had undertaken a surprise check at stage No.15. Noticing the irregularity committed by the writ petitioner in issuing a ticket of lower denomination of Rs.8.25 ps as against the requisite fare of Rs.11.50 ps to a passenger who had boarded the bus at Santhamaguluru bound for Ongole and also another irregularity of wrongly punching the tickets, the petitioner had been charge sheeted on 30.10.1991. An enquiry was conducted into the allegations leveled against the writ petitioner and based upon the report submitted by the Enquiry Officer, he had been inflicted with the punishment of stoppage of two increments with cumulative effect. The writ petitioner then instituted I.D.No.417 of 1994 on the file of the Labour Court, Guntur calling in question the correctness of the action of the respondents in imposing the punishment of stoppage of two increments with cumulative effect. One of the aspects pleaded before the Labour Court was that the punishment imposed was disproportionate to the nature of the allegations forming part of the

misconduct which could be said to have been proved against the writ petitioner.

All through, the writ petitioner had been pleading consistently that one particular passenger who had boarded the bus at Santhamaguluru stage had tendered only Rs.8.25 ps being the actual fare, as he wanted to get down at Timmanapalem. Therefore, the fare collected from the said passenger was

Rs.8.25 ps only being the correct fare for traveling upto Timmanapalem from Santhamaguluru. However, since the said passenger was in an inebriated condition, he has mentioned to the checking Inspector that he had to get down at Ongole. In fact, the Inspector of the surprise squad by name, Sri K.Prasada Rao who had been examined during the course of enquiry, has deposed that the vehicle has been checked when it has reached Medarametla and in fact, the Inspector has been informed by the passenger that he has asked for the ticket upto Ongole. The Inspector himself has opined that that because of the inebriated condition of the passenger, he has misled the Conductor by stating that he had to get down at Timmanapalem and accordingly, the Conductor has collected Rs.8.25 ps which is the correct fare whereas during the surprise check, the passenger has changed his destination to Ongole for which the correct fare is Rs.11.50 ps from Santhamaguluru. During the inspection, they did not believe that the passenger has been right and correct in his statement that he informed the Conductor that his destination is Ongole, but not Timmanapalem.

The writ petitioner points out that inspite of the statement specifically made by the Inspector of the Check Team itself, the Enquiry Officer found the writ petitioner guilty. He therefore urges that the finding recorded by the Enquiry Officer holding him guilty, is not fair

or proper which can be drawn in the peculiar fact situation arising from an incoherent conduct exhibited by the passenger. In fact, the Tribunal had not focused its attention on this aspect of the matter. But, however, in view of the fact that the writ petitioner himself has admitted that there were irregularities committed by him in the matter of punching the tickets indicating the stage at which the passengers have boarded the bus and their ultimate destination, the Tribunal had exercised its jurisdiction under Section 11-A of the Industrial Disputes Act and ordered the respondents to impose the punishment of withholding of one increment for a period of one year with cumulative effect instead of the punishment of stoppage of two increments with cumulative effect.

Heard Sri G.Ravi Mohan, learned counsel for the petitioner and Sri R.Manmadha Reddy, learned Standing Counsel for the A.P. State Road Transport Corporation.

The enquiry proceedings have been placed before me.

Sri K.Prasada Rao, T.T.I. of the Divisional Enforcement Squad, Narasaraopet has deposed that the passenger who boarded the bus at Santhamaguluru was clearly in an inebriated condition at the time of the check of the bus in question. Based upon the interaction of the Inspection Team with the said passenger, Sri Prasada Rao himself has gained an impression that the passenger was misleading in his statements inasmuch as he is not in a position to say exactly as to whether he wanted to get down at Timmanapalem or Ongole. He had informed initially that he would like to alight at Timmanapalem, but after a while, the passenger seems to have changed his mind and instead, stated that he wanted to get down at Ongole. Thus, wholly due to his incoherent condition, he could have possibly misled the Conductor. Therefore, the benefit has got necessarily to be put in

favour of the Conductor who has possibly believed the statement made by the passenger that he wants to get down at Timmanapalem, but not at Ongole. That could possibly be the reason that the correct ticket of Rs.8.25 ps has been issued by the Conductor.

But at the same time, the Conductor had been punching the tickets inappropriately and he had admitted this limb of the charge. Every Conductor is required to punch the tickets twice indicating the stage at which the passenger has boarded the bus and the stage at which he prefers to alight. Based upon this punching, whether the fare is correctly collected or not, can be decided. For instance, the fare from Narasaraopet to Ongole i.e. the starting point and the end point of the journey could be the maximum whereas the fare from the next stage onwards had to get diminished. . So, therefore, the fare which is liable to be collected from the passengers is squarely dependent upon the starting and alighting points of the journey. Therefore great care has got to be employed by the Conductor while undertaking the punching of tickets.

There were no cash irregularities noticed even by the surprise check Team and possibly the petitioner may have collected correct fares from all the passengers. If the punching of tickets has not been correctly done by him, it leaves scope for mis-utilisation of tickets by the passengers concerned. For instance, as was narrated above, the passenger who had boarded the bus at Santhamaguluru, if he were to alight at Timmanapalem, the punching of ticket in that case should have been at stage nos.5 and 16. The fare for this distance would be Rs.8.25 ps. But however, if the ticket has been punched at stage Nos.5 and 21, the stage No.21 being the last destination point viz., Ongole, the fare collected from the passenger would be improper and consequently, as against the ticket issued for

Rs.8.25 ps, the ticket should have been issued for Rs.11.50 ps, being the correct fare. Since the Ticket is punched at stage 21, even though a fare of Rs.8.25 was paid, the passenger can still travel upto Ongole. In such a case, the Corporation will lose revenue of Rs.3.25 ps due to inaccurate fare collected from the passenger concerned. Therefore, to this extent of misconduct, the writ petitioner is certainly guilty.

This leaves us with the question of the assessment of the appropriate punishment that has to be imposed in the circumstances of this nature. It is a settled principle of law that the punishment must not only meet the offence/ misconduct committed by the individual, but it should also be proportionate to the proved misconduct. The principle is that in penalizing the delinquent employee concerned, the punishment imposed should not be so disproportionately a high punishment to the misconduct held established. Therefore, the Courts have been pointing out that excessively high punishments which do not match the quantum of misconduct proved reflects improper assessment and thus offends the equality clause contained in Article 14 of the Constitution. This principle has been brought into Indian jurisprudence by the Supreme Court in **Ranjit Thakaur v. Union of India**[1] in the following words:

> "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction.

> Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service (1984) 3 WLR 1174 (HL) Lord Deplock said :
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> ".....Judicial Review has I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis, may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community ....."
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> In Bhagat Ram v. State of Himachal Pradesh, AIR 1983 SC 454 (at p 460) this Court held :
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> "It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution."
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> The point to note and empliasise is that all powers have legal limits.
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> In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."

Therefore, the Tribunal which had been specifically vested with the power under Section 11 A of the Industrial Disputes Act has the power to modify the punishment which has been imposed by the employer and order for imposition of an appropriate punishment. The Tribunal is therefore required to adjudicate this issue carefully and

properly. It has to necessarily take into account and consideration all the relevant facts and should step into the shoes of a model employer who would have imposed a most appropriate punishment listed out in the C.C.C.A. Rules which will meet the quantum of misconduct held established against the employee. This exercise has got to be rational and not arbitrary. Unfortunately, in the instant case, the Labour Court having realized that the punishment imposed by the first respondent viz., stoppage of two increments with cumulative effect is excessive, has reduced it to that of stoppage of one increment with cumulative effect. Obviously, the Labour Court has not realized that withholding of increments with cumulative effect will have a cascading effect running on to the post retirement benefits of the employee concerned. The punishment of stoppage of increments with cumulative effect is considered to be a major punishment. (see **Mohinder Singh v. State of Punjab**[2]). Therefore, for the misconduct held established against the writ petitioner viz., punching the tickets irregularly and improperly, whether a major punishment involving stoppage of increments with cumulative effect is warranted and called for, has not been examined at all. Since the misconduct held established against the writ petitioner is minor in nature, but at the same time, has the potential of being mis-utilized resulting in loss to the Corporation, imposition of such a minor punishment which would have left a definite impact on the petitioner would have met the ends of justice instead of imposing a major punishment. Therefore, it would have been wholly appropriate for the Tribunal to modify the punishment imposed by the competent authority viz., stoppage of two increments with cumulative effect to that of stoppage of two increments for a period of two years without cumulative effect. It would meet the ends of justice inasmuch as the employee concerned would have felt the pinch of losing out two

increments causing him financial loss for a period of two years, so that it will serve as a constant reminder to him to be more careful while discharging the functions as a Conductor.

I therefore consider it appropriate to modify the Award passed by the Tribunal in the instant case by ordering the first respondent to impose the punishment of withholding two increments without cumulative effect upon the writ petitioner. The writ petition is allowed to the extent indicated above. No costs. Accordingly, the Award of the Labour Court stands modified.

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NOOTY RAMA MOHANA RAO.J.

4.4.2007
psr

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[1] AIR 1987 SC 2386

[2] 1995 Supp (4) SCC 433